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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR      | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|---------------------------|---------------------|------------------|
| 10/799,820      | 03/12/2004  | Marc Joseph Thomas Lebert | 4316-043718         | 8364             |

7590 04/18/2005  
Kirk M. Miles  
700 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219-1818

EXAMINER

MATHEW, FENN C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3764

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/799,820

Applicant(s)

THOMAS LEBERT, MARC  
JOSEPH

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7-10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sellge, Jr. et al. (U.S. 4,258,915). Referring to claim 1, Sellge teaches an elongate, substantially upright and substantially rigid weight-bearing portion for supporting the weight of a user during exercise, the weight bearing portion including a gripping portion (12) extending across a top of the device, the weight bearing portion having an open bottom and generally lying in a first plane, a pair of ground-engaging feet, one at either end of the weight-bearing portion, the feet extending outwardly from the plane to stabilize the upright weight-bearing portion without interfering with the open bottom, the feet being spaced apart to permit the positioning of a user between the feet and be clear of interference, the feet and weight-bearing portion being configured so that the mass of the device is generally balanced about the first plane, wherein the user may grip the gripping portion clear of interference from the feet. With respect to claim 2, Sellge teaches the feet comprising elongate elements oriented substantially perpendicular to the plane. Referring to claim 3, Sellge teaches the feet and weight-bearing portions being configured so that the height of the

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gripping means and the distance between the feet is fixed. Referring to claim 7, Sellge teaches the gripping bar being substantially round in cross-section.

Referring to claims 8-9, Sellge teaches the device comprising an anti-slide device associated with each foot, wherein the anti-slide device comprises rubber caps placed on the ends of the feet. Referring to claim 10, Sellge teaches the first weight-bearing portion comprising first and second generally upstanding sections extending from the first and second feet, and a generally horizontal transverse section comprising the gripping portion and extending between the first and second generally upstanding sections. Referring to claim 15, as best understood, Sellge teaches a configuration in which one or more of the device can be placed in nested configuration with one another.

3. Claims 1, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Moye (U.S. 5,033,737). As broadly claimed, Moye discloses an elongate, substantially upright and substantially rigid weight-bearing portion for supporting the weight of a user during exercise, the weight bearing portion including a gripping portion (120) extending across a top of the device, the weight bearing portion having an open bottom and generally lying in a first plane, a pair of ground-engaging feet, one at either end of the weight-bearing portion, the feet extending outwardly from the plane to stabilize the upright weight-bearing portion without interfering with the open bottom, the feet being spaced apart to permit the positioning of a user between the feet and be clear of interference, the feet and weight-bearing portion being configured so that the mass of the device is generally balanced about the first plane, wherein the user may grip the gripping

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portion clear of interference from the feet. With respect to claims 4-5, Moye teaches hollow metal tubing for the feet and gripping portion.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-14, 16-19, and 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sellge, Jr. et al. Referring to claims 11-14, Sellge teaches the claimed invention but fails to disclose specific limitations regarding the height of the gripping portion with respect to the floor. The specific limitations chosen would have been obvious to one of ordinary skill in the art, as the skilled artisan would select height dimensions based on the specific exercising function desired, as well as user dimension and preference. With respect to claims 16-19, and 21-28, the subject matter is discussed in the claims above. The feature of having two such devices is considered obvious since it has been held that the mere duplication of working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

5. Claims 6, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moye. With respect to claim 6, Moye teaches the claimed

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invention but fails to disclose specific limitations regarding the diameter of the hollow metal tubing. The specific limitations chosen would have been obvious to one of ordinary skill in the art, as the skilled artisan would select height dimensions based on the specific exercising function desired, as well as user dimension and preference. With respect to claims 16 and 20, Moye teaches the subject matter as discussed above. The feature of having two such devices is considered obvious since it has been held that the mere duplication of working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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|-------------|----------------|
| Ashenfelter | U.S. 2,410,330 |
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|        |                |
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| Snyder | U.S. 5,501,647 |
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|             |                |
|-------------|----------------|
| Vitt et al. | U.S. 5,967,093 |
|-------------|----------------|

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*fc*

fcm

April 12, 2005



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